

Election Contests

Minn. Stat., ch. 209

HOUSE RESEARCH

An election contest is a formal challenge to the declared result of an election or to the way the election was administered. Any eligible voter can contest an election, including a candidate. In an election contest, the “**contestant**” is the person who filed the contest; the “**contestee**” is the person opposed to the allegations made in the contest.

What can be contested?

The nomination or election of any person for whom the voter had the right to vote may be contested, if that person is declared nominated or elected to office. A voter may also contest the declared result of a constitutional amendment or other question voted upon in an election.

A contest may be brought over the following issues:

- (1) Irregularity in the conduct of an election or canvass of votes
- (2) The question of who received the largest number of votes legally cast
- (3) The number of votes legally cast in favor of or against a question
- (4) A deliberate, serious, and material violation of Minnesota election law

Where must notice of an election contest be filed?

The contestant must serve a notice of contest to the necessary parties and file the notice with the court administrator of the appropriate district court. For election contests relating to statewide elections, nominations, constitutional amendments, or other questions, notice must be filed in Ramsey County.

For contests relating to any other office, notice must be filed in the county where the contestee resides. For contests over any other question, notice is filed in any one of the counties where the question appeared on the ballot.

A notice of contest must be filed within five days after completion of the canvass of a primary or special primary election, or within seven days after completion of the canvass of a general or special election.

If a deliberate, serious, and material violation of a local campaign finance law is alleged, the deadlines are within five days in the case of a primary and ten days in the case of a general election. These time periods run from the date of filing of a campaign statement that provides grounds for the contest.

How are election contest judges chosen?

If a contest involves an office or ballot question voted upon statewide, the chief justice of the Minnesota Supreme Court appoints a three-judge panel to hear the contest.

In state legislative contests, the parties chose, through process of elimination, a judge to preside over the contest from a list of eligible judges compiled by the chief justice.

For all other races, judges from the county in which the contest was filed hear the contest.

How are election contest trials conducted?

An election contest trial must begin within 20 days after the filing of the notice of contest. To the extent practicable, the proceedings of the election contest trial follow the same rules that apply to other civil actions.

Does a candidate have the right to monitor or inspect the ballots?

In any election, a candidate may keep a continuous visual guard over the ballots until the time for instituting a contest expires. Additionally, if there is a contest, either party to the contest may keep a visual guard over the ballots or appoint an agent to do so. If a candidate or a party to a contest elects to maintain visual watch over the ballots, the official ballot custodian must also appoint a person to maintain simultaneous visual watch over the ballots.

After a contest has been instituted, either party may have the ballots inspected in order to prepare for trial. The court appoints as many sets of three inspectors for a contest of any office or question as are needed to count and inspect the ballots expeditiously. One inspector is selected by each of the parties to the contest and those two selected inspectors choose the third. A party requesting an inspection of the ballots must file a bond with the court and must pay the administrative costs of the inspection if the requesting party loses the election contest.

A formal ballot “inspection” amounts to a recount of the votes cast for the office or ballot question at issue in the contest. A report of the inspection must be made indicating the number of votes cast for each candidate or ballot question and listing the ballots on which the inspectors cannot agree.

What are the potential results of an election contest?

If a **nomination** is contested, the court decides which candidate, if any, was nominated and entitled to be named on the official ballots.

If the contest involved an **error in the counting** of ballots, the official authorized to issue the certificate of election shall issue the certificate to the person entitled to it.

If a contestant succeeds in a contest where there is no question as to which of the candidates received the highest number of votes cast in the election, the contestant is not, by reason of the disqualification of the contestee, entitled to the certificate of election. In other words, a second-place candidate does not automatically win because the candidate receiving the most votes was disqualified as a result of a contest.

The court does have the authority to revoke an election certificate that has been issued to a contestee if the time for an appeal of a decision has expired, or if an appeal of the decision by a contestant is successful. This authority does not exist in state legislative office contests.

If the court determines that a **serious and material defect in the ballots** changed the outcome of an election, that election must be declared invalid.

Who pays the cost of an election contest?

If a contestee (person defending the result of the election) succeeds in the contest, the cost must be paid by the contestant (person who is contesting the result of the election). If the contestant wins, the contestee must pay.

A local jurisdiction may be required to pay the cost of the contest if the contestee loses because of an error in counting of the ballots, an error in canvassing the returns, or any other irregularity in administering the election that causes the prior result to be overturned.

Can an election contest result be appealed?

The decision of a district court on an election contest may be appealed. The party filing the appeal must also file a bond of \$500 to pay the costs of the appeal to the opposing party if the appeal fails.

In most cases, a notice of appeal must be served and filed within ten days of a district court's decision related to a general or special election, or within five days of a district court's decision related to a primary election. The record on appeal must be made, certified, and filed within 15 days after service of notice of the appeal.

In the case of a contest of an election for statewide office or constitutional amendment, the appeal must be made directly to the Minnesota Supreme Court.

How are election contests for state legislative offices conducted?

In a legislative contest, the district court submits a copy of the notice of contest to the chief justice of the Supreme Court. In cases where an **unfair campaign practice** is alleged, the chief justice gives the parties a list of all the district judges in the state, except those involved in a trial or whose health precludes serving as judge in the election contest. The parties meet together and go back and forth striking out names of judges until only one remains.

If **no unfair campaign practice** is alleged, the same procedure is followed, except with only the names of the judges in the judicial districts covering the area served by the contested office.

Once a judge is chosen, he or she must start the proceeding within 15 days after the notice of contest is filed. The judge decides the contest, and unless the matter is appealed to the Supreme Court, the judge transmits the findings to either the House of Representatives or the secretary of

the Senate, by the first day of the legislative session. An appeal to the Supreme Court of a contest for state legislative office must take priority over all other matters before the court.

Upon completion of the judicial contest procedure, the case is moved to the affected body of the state legislature. Either the House of Representatives or the Senate calls the parties to appear before the body, and evidence is taken. Upon completion of the presentation of evidence and arguments from each side, the body votes *viva voce* (by voice) to determine the result of the contest. A person who is a party to the contest is not permitted to vote.

How are election contests for U.S. congressional office conducted?

When a contest relates to the office of United States Senate or United States House of Representatives, the only question to be decided by the court is which party to the contest received the highest number of votes legally cast at the election. Evidence on any other points specified in the notice of contest must be taken and preserved by the judge, but the judges are not permitted to make findings or conclusions on those points.

After the time for appeal has expired, or after the final judicial determination of the contest, the district court forwards the files and records of the proceedings, with all the evidence, to the appropriate presiding officer in the United States House or Senate.